Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 361 of 2002

U.P.State Road Transport Corporation

… **Appellant.**

Versus

Smt. Renu Depua and others … **Respondents.**

Mr. A.N. Sharma, learned counsel for the appellant.
Mr. C.D. Bahuguna, learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 03, 2004

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Award dated 6-09-2002 passed in Motor Accident Claim Case No.39 of 2002 by Sri V.B.Rai, the then District Judge/Motor Accident Claims Tribunal, Champawat, ***(in short the Tribunal)***, Whereby the learned Tribunal has allowed the claim petition and awarded Rs. 7,34,200/- in favour of the claimants ***(Respondent Nos. 1 & 2)*** as against Opposite Party Nos. 2 and 3 to the extent of 50% each***(Respondent N.4 & Appellant)*** along with 10% simple interest per annum.

Brief Facts, giving rise to the present appeal, are that on 16.8.1998, Soban Singh, husband of claimant no.1 and father of claimant no.2, who was sailor in the Indian Navy, was coming to his village on the fateful day by Jeep No. U.P. 03-2356 belonging to O.P No.1/Respondent No.3 and sitting by the side of the driver, from Khetikhan to Lohaghat. At about 9.30 a.m., when the said Jeep reached near Methidhek, due to rash and negligent driving by the driver on the Jeep, there was head-on collision of the jeep with Bus No. U.P. 2 B-1683. It is also alleged that the bus in question

was also being driven rashly and negligently by its driver, with result deceased Soban Singh as well as other co-passengers of the jeep sustained grievous injuries. He was taken to Government Hospital at Lohaghat for treatment by some of the passengers. Then, he was referred to Pithoragarh for intensive treatment and on the same night at 2 a.m. he was brought to Military Hospital at Pithoragarh for treatment; but before the dawn of the day, he succumbed to his injuries, the information of which was given to police. The deceased was 25 years of age on drawing salary worth Rs. 5,043/- at the time of death. Hence the claimants filed petition for compensation before the learned Tribunal on 1.3.2000.

The Opposite Party No.1(Respondent No.3) contested the petition by filing his written statement. The answering O.P. has admitted the date, time and place of the accident and the injuries sustained by the deceased and other co-passengers, but has denied the allegation that the accident occurred due to rash and negligent driving by the Jeep driver, rather it took place due to sole rash and negligent driving by the driver of the bus in question. It was also alleged that the jeep driver was holding a valid driving licence and the Jeep was insured with Opposite Party No. 2/Respondent No.4.

The Opposite Party No.2/Respondent No.4 Insurance Company of the Jeep, also contested the petition by filing written statement on the ground inter alia that the Jeep driver was not holding a valid driving licence at the time of the accident and the vehicle was not insured with the Company.

The O.P. No.3/Appellant also contested the petition by filing written statement on the ground inter alia that the accident was result of rash and negligent driving by the driver of the bus in question and not by the sole negligence of the Jeep driver.

On the pleadings of the parties, following Issues were framed by the learned Tribunal:

1. ***Whether on 16.9.98 at 9:30 a.m. on Lohaghat-Khetikhan motor road, near Methidhek, a motor accident took place due to rash and negligent driving of jeep No. U.P. 03-2356, belonging to O.P. No.1, by its driver, resulting into injuries to Soban Singh, who was traveling by it and succumbed to his injuries in the night of 16/17-8-98 in the hospital?***
2. ***Whether on the said date, time and place, the alleged accident took lace due to rash and negligent driving by the driver of Bus No. UP 2B-1583 belonging to O.P.No.3, as alleged by O.P.No.1?***
3. ***Whether on the said date, time and place, the alleged accident occurred due to contributory rash and negligent driving of the respective vehicles by its drivers?***
4. ***Whether on the date, time and place, Jeep driver of O.P.No.1 was not holding a valid driving licence?***
5. ***Whether the jeep in question was not insured with O.P.No.2?***
6. ***Whether the claimants are entitled to any compensation? If so, to what amount and from which of the parties?***

The claimants/respondent nos. 1 and 2, in documentary evidence, filed salary certificate in respect of salary of the deceased, post mortem report, information given to Station Officer Lohaghat by claimant no.1, inquest report of the deceased and other service documents of the deceased and have also examined claimant no.1 as P.W.1 and witness Surendra Singh as P.W.2, before the Tribunal. On the other hand, the O.P.No.1 has filed photo-copies of permit, Insurance Covernote, fitness, registration of jeep and driving licence of driver Bhairo Datt Bhatt as well as certificate of O.D. Claim in respect of the Jeep in question, but has not adduced oral evidence. O.P.No.2, Insurance Company, has filed investigation report of the investigator; but it too has not adduced any oral evidence. O.P.No.3/Appellant has examined driver Keshar Singh as D.W.1 in support of its case.

The learned Tribunal, after hearing both the parties and going through the record, took Issue Nos. 1, 2 and 3 for decision together. The Tribunal in its judgment has discussed all these issues in detail and has come to the conclusion that deceased Soban Singh has died as a result of composite rash and negligent driving by the drivers of both the Jeep and Bus in question. On Issue No.4, the learned Tribunal has observed that no argument was placed by the Insurance Company and since photocopy of the driving licence of Jeep driver Bhairo Datt Bhatt, showing the same to be valid, is on record, therefore, this issue has been disposed of accordingly. Similarly, on Issue No.5, the learned Tribunal found that on the date of accident, the jeep in question was duly insured as was clear from the Insurance Cover Note, therefore, issue was decided accordingly. On Issue No. 6, the learned Tribunal has recorded a detailed finding considering all relevant aspects for working out amount of compensation for the death of deceased Soban Singh in accordance with relevant provisions of the Motor Vehicles Act and the Schedule under Section 163-A of the said Act. Dependency of the deceased per annum has been calculated to be 40,400/- per annum, in view of salary being drawn by the deceased and multiplier of 18 was used meaning thereby that the total loss of dependency was held 40,400 X 18 = 7,27,200/-. In addition, the learned Tribunal found the claimants entitled to 2000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium. Thus, the Tribunal has found the claimants entitled to get total compensation of Rs. 7,34,200/- with simple interest @ 10% per annum and Rs. 1,000/- as costs of proceedings by the impugned judgment and award, holding opposite party nos. 2 and 3 each liable to pay 50% amount of compensation, mentioned earlier.

Aggrieved by the said judgment and award, dated 6-9-2002 the present appeal has been preferred before this Court by the Uttar Pradesh State Road Transport Corporation, owner of the bus in question.

The appellant has assailed the impugned judgment and award contending that the sole liability on the jeep driver should have been fastened as the jeep in question was on its wrong side, thereby the finding of contributory negligence was perverse and not based on evidence on record and that the amount of award has been assessed excessive and exorbitant.

We have heard learned counsel for the parties and have carefully scrutinized the evidence on record as well as the impugned judgment and award.

It may be mentioned here that we have already observed above that the learned Tribunal has discussed the point of contributory negligence while recording its finding about the negligence and rashness on the part of both the drivers of Jeep and Bus in question. On careful perusal of the entire material before us, we are unable to accept the argument that the accident in question was the result of sole negligence on the part of Jeep driver. The learned Tribunal has elaborately discussed both oral and documentary evidence on each and every point and it has rightly held that the accident in question was result of contributory negligence to the extent of 50% each on the part of Jeep and Bus drivers. We are not inclined to take a view other than as held by the learned Tribunal, which is fully based on the material on record. There is no force at all in this contention of the appellant.

As regards assessment of compensation amount, we see no reason to disagree with the findings arrived at by the learned Tribunal. The deceased was young boy of 25 years of age and was serving in the Indian Navy. He was drawing total salary of Rs. 5043/- at the time of his death in the said accident. In our view, the learned Tribunal has not erred in working out annual loss at Rs.40,400/- and then applying multiplier of 18 for working out the total amount of compensation. Compensation towards funeral expenses and loss of consortium has also been awarded in

accordance with the Schedule of Section 163-A of the Motor Vehicles Act. The appellant has failed to show as to how the findings arrived at by the learned Tribunal are illegal and not based on evidence on record. The argument of the appellant advanced on this score too is not tenable. In out view, there is nothing on record which may call for interference with the findings of the learned Tribunal.

Accordingly, the appeal has no merit. The impugned judgment and the findings recorded by the learned Tribunal are upheld. However, taking into consideration the fact that the appellant has not pressed its appeal No. A.O. 363 of 2002 arising out of the same motor accident in the Lok Adalat held on 13.2.2004 held on and also considering the fact that the claimant-respondent nos. 1 and 2 must have been getting family pension owing to death of deceased Soban Singh, in the present circumstances, we feel it just and proper to award Simple Interest at the rate of 6% instead of 10% per annum to the claimants, as ordered by the learned Tribunal. To that extent, the order under appeal is modified.

With the above modification, the appeal is dismissed on merit. No order as to costs.

The amount deposited in this Court by the appellant shall be transmitted to the Motor Accident Claims Tribunal concerned.

(B.S.Verma, J.) (P.C. Verma, J.)

RCP